



To: Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Re: Title: BISARYL DERIVATIVES HAVING FSH  
MODULATORY ACTIVITY  
Serial Number 10/623,640  
Applicant: Guo et al.  
Agent's File Reference: 1073.071

**Petition under 37 CFR §5.25 for a Retroactive License under 35 U.S.C.  
184**

Dear Sirs:

Enclosed please find the materials necessary for a § 5.25 Petition for a Retroactive License under 35 U.S.C. 184. Applicant respectfully requests that you review the materials and grant retroactive foreign filing licenses for the subject matter of two European applications titled "Bisaryl Derivatives"

The following information is provided for your review:

(1) The subject matter of the patent application material contained in US serial number 10/623,640 "Bisaryl Derivatives Having FSH Modulatory Activity" was developed through a joint venture between Pharmacoepia, Inc. (Cranbury, NJ, United States), and N.V. Organon/ Akzo Nobel N.V. (The Netherlands). Pharmacoepia, Inc. developed a library of compounds and tested the initial series of compounds for FSH activity in the United States.

(2) The subject matter was initially filed in a first application for a European Patent by N.V. Organon/Akzo Nobel on December 3, 1999. This application, EP 99 204109.5, was withdrawn in November 2000.

(3) The material was filed a second time in a second application for a European Patent by N.V. Organon/Akzo Nobel on January 19, 2001. Pharmacoepia was named as co-applicant. The second application, EP 01 200194.7, was deemed withdrawn on July 12, 2001.

(4) Unlicensed patent application material disclosing at least some portion of the subject matter of US 10/623,640 was thus twice filed for a European Patent by N.V. Organon/Akzo Nobel.

(5) On December 19, 2001 N.V. Organon/ Akzo Nobel assigned all remaining interest in EP 01 200194.7 to Pharmacoepia, Inc.

(6) On November 18, 2002, Pharmacoepia filed a PCT application (PCT/US02/03777) claiming the priority of EP 01 200194.7.

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(7) On July 21, 2003, Pharmacopeia, Inc. filed a US patent application (10/623,640) entering the PCT into the national phase in the United States. It was at this point that the question of a license under 35 USC 184 first occurred to the applicants. This petition is therefore diligently filed.

(8) Because both earlier European filings were undertaken by European agents under the direction of a European applicant, it did not occur to either party that a possibility might exist that a US license under 35 U.S.C. 184 might have been required. Upon discovery of the error, applicants now seek a retroactive license under 35 U.S.C. 184. Assuming the filings of the applications for a European patent without a license were in error, the error was without deceptive intent.

(8) A verified statement (declaration) from Dr. Marijke Hogenbirk, N.V. Organon Patent Department, is attached containing:

(i) an averment that the subject matter in question was not under a secrecy order at the time it was filed abroad;

(ii) an explanation of why the material was filed abroad through error and without deceptive intent without the required license under § 5.11 first having been obtained.

(9) The subject matter in question is not currently under a secrecy order. In fact, both the pending US application (10/623,640) and the PCT on which it is based (PCT/US02/03777) have been granted foreign filing licenses.

(10) The required fee according to 37 CFR § 1.17(h) is enclosed.

Applicants respectfully request that the USPTO consider the filing of this petition as a sufficient showing that the foreign filing license has been diligently sought after discovery of the proscribed foreign filing. If there are any further materials that would facilitate review of this request, please contact applicants' undersigned representative.

Sincerely,

HESLIN ROTHENBERG FARLEY & MESITI P.C.



Philip E. Hansen  
Agent for Applicants  
U.S. Reg. No.: 32,700

PEH/lab  
Enclosures